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41ST ASSEMBLY DISTRICT

AB 269: Increasing Penalties for Violations of 72 Hour No Contact Order Violations

**Testimony by Representative Joan Ballweg
Senate Committee on Labor, Public Safety, and Urban Affairs
November 29, 2011**

Thank you, Mr. Chairman, and members of the committee, for hearing testimony on Assembly Bill 269 (AB 269). As we all know, Domestic Violence is an ongoing concern in our state. In fact, recent statistics show that one in four women will be the victim of Domestic Violence in their lifetime. The goal of AB 269 is to strengthen protections for victims and witnesses of domestic violence crimes by providing penalties that more closely match the severity of the underlying crime. This legislation will protect crime victims from continued intimidation and interference by offenders.

Currently the law provides little deterrent to keep domestic abuse offenders from intimidating and interfering with crime victims and witnesses. Violations of a "no contact" order result only in a monetary fine (noncriminal penalty). AB 269 provides ample consequences for abusers who do not comply; increasing the penalties for a no contact order violation to a Class A misdemeanor will serve as a greater deterrent for abusers.

The legislation also creates a graduated penalty structure for violating "no contact" provisions ordered by the judge as a condition of probation. The graduated penalty structure in the legislation matches the structure presently

used for bail jumping violations. The legislation further allows the court to create "no contact" prohibitions to protect witnesses of crime. Finally, the legislation ends a loophole that has allowed offenders to escape penalty when a judge does not specifically recite the penalty for a violation.

AB 269 had a public hearing in the Assembly Committee on Public Health and Public Safety in October and was unanimously passed both out of committee and again on the Assembly floor.

This legislation strengthens protections for victims and witnesses. Your support of this legislation will protect crime victims from continued intimidation and interference by offenders.

Following my testimony are representatives of the professionals and organizations that support victims and witnesses of domestic abuse crimes. They can provide you with specific information about how this bill will aid the many Wisconsinites affected by domestic violence.

Thank you again for your time support of this bill.

Testimony



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To: Members of the Senate Committee on Labor, Public Safety, and Urban Affairs
From: Tony Gibart, Policy Coordinator, Wisconsin Coalition Against Domestic Violence
Date: November 29, 2011
Re: Assembly Bill 269

Chairperson Wanggaard and Members of the Committee, thank you very much for the opportunity to provide testimony on Assembly Bill 269. I also want to thank Chairman Wanggaard and Representative Ballweg for authoring this proposal and Senator Lazich for cosponsoring it. My name is Tony Gibart, and I represent the Wisconsin Coalition Against Domestic Violence (WCADV). WCADV provides statewide support for victims of domestic abuse, their families, and for professionals working with victims, batterers, and their children. WCADV fully supports this bill, which will close the current loop-holes that allows domestic abusers and other criminals to violate no-contact conditions with little consequence. Under AB 269, offenders who violate the 72-hour no-contact conditional release in domestic violence cases will be returned to custody and subject to the same penalties as violators of other bail conditions. AB 269 also will close a loop-hole that allows convicted criminals to violate no-contact conditions imposed at sentencing.

The current domestic violence arrest law contains a loop-hole, which allows offenders to violate the no-contact condition of release.

Currently, when an individual is arrested in accordance with Wisconsin's domestic abuse mandatory arrest law, the individual may not be released until he or she signs a conditional release agreement that states that he or she will not contact the victim for 72 hours unless the victim consents to contact in writing. However, offenders are able to circumvent this victim safety provision because of a dangerous loop-hole. The problem is that violations of the conditional release agreement are not crimes. Therefore, when an offender blatantly violates the condition and contacts the victim, law enforcement has no authority return the offender to custody or prevent future violations.

The no-contact condition (or "cooling off period") is designed to prevent repeat violence and give victims time to recover.

The 72-hour no-contact conditional release is an important feature of Wisconsin's mandatory arrest law. Many states have similar provisions, which are commonly referred to as cooling off periods. Cooling-off periods are informed by an understanding that repeat abuse is most likely to occur in the first few days following an initial attack. When the police are called or victims take steps to leave, perpetrators, driven by a desire to reassert dominance and control, are more likely to become increasingly violent. The time period also gives victims an opportunity to relocate or seek services.

Without AB 269 the cooling off period will remain ineffective, to the frustration of law enforcement and the detriment of victims.

Under the current statute, violations of the no-contact condition are only punishable with a monetary forfeiture; and therefore, violations are not defined as crimes. This results in an untenable situation: the offender has willfully violated a condition of his release, but law enforcement has no legal authority to return the offender to custody. Law enforcement officers operating under this system are extremely

frustrated by their powerlessness to enforce the conditional release. Likewise, victims lose faith in the ability of the legal system to protect them. Even more troubling, offenders lose respect for the law and are allowed to push legal boundaries without consequence.

AB 269 will also increase the effectiveness of no-contact orders issued at sentencing.

Current law allows a judge to order a person convicted of a crime to have no contact with a victim of the crime; however, there are several aspects of the statute that diminish its effectiveness (Note this provision is separate from the 72 hour no-contact condition, which applies at arrest, not after conviction).

First, current law requires the judge to inform the convicted individual of the prohibition and the penalty for violating the condition before a person can be punished for a violation. This is perhaps the only instance in the criminal code in which someone has to be specifically informed of the penalty before a prohibition takes effect. Currently, many judges do not specifically inform the convict of the penalty for violating the condition; and therefore, the no-contact conditions are invalid. The bill removes the current notice requirements and instead requires the defendant be provided with written notice in the judgment of conviction.

Second, the current statute does not allow a no-contact condition imposed at sentencing to protect witnesses. In many cases, key witnesses have as much a desire and interest in not having contact with the convict as the actual victim. The bill allows the no-contact condition to also apply to witnesses.

Lastly, the bill brings the penalties for violating the no-contact condition in line with the underlying crime for which the individual was convicted. Under current law, violations of the no-contact order can only be charged as misdemeanors. If the individual who has the no-contact order issued against him or her was convicted and sentenced for a serious felony, the penalty for violating the no-contact condition may not be strong enough to deter violations. Simply put, someone in prison for many years on felony charges who wants to harass the victim or witness may not really care if they are convicted of only a misdemeanor for the violation. Therefore, under the bill, the penalty for violating a no-contact order issued after a felony conviction is a class H felony.

Summary

This bill will give the power back to victims and police, while taking it away from savvy offenders who would otherwise take advantage of legal loop-holes. These simple changes will have a significant impact on victim's safety. With the passage of this legislation, the law will actually protect and empower victims—not be a source of more broken promises.

Thank you again for the opportunity to provide testimony. I urge the Committee to support AB 269.



Van H. Wanggaard

Wisconsin State Senator

Thank you, members of the committee, for attending this hearing on Assembly Bill 269. This bill includes several important measures that will help protect victims of domestic abuse, shield witnesses who testify against abusers from harm, and close a loophole in the law that can keep offenders from being held accountable for violating court ordered prohibitions.

The 72 hours following a domestic abuse incident can be a very dangerous time for victims. For this reason an individual who has been arrested for a domestic abuse incident must avoid the victim's residence and avoid contacting the victim for 72 hours following an arrest, unless the victim of the alleged domestic abuse signs a waiver. However, the current penalty for violating the 72-hour "no contact" rule is a mere forfeiture, or a non-criminal penalty. This means the penalty for violating a no contact requirement is far less severe than the underlying crime, and in many cases this is not enough to deter an alleged abuser from contacting the victim which can leave the victim vulnerable to further abuse.

This bill strengthens protections for victims of domestic abuse by providing a penalty that better matches the magnitude of the crime which brought about the contact prohibition. Under Assembly Bill 269 an alleged domestic abuser who intentionally violates the 72-hour "no contact" requirement is guilty of a misdemeanor and is subject to a fine of up to \$10,000 or imprisonment of up to nine months, or both. More importantly, advancing the penalty from a forfeiture to a misdemeanor gives law enforcement officers the ability to detain individuals that intentionally violate the 72-hour contact prohibition, which helps shield victims from further harm.

In addition to these added protections for victims, Assembly Bill 269 also strengthens protections for witnesses of a crime. Currently when a court imposes a sentence on an individual or places an individual on probation they may prohibit them from contacting victims. This bill would also give the court the ability to prohibit the individual from contacting witnesses to the crime. This important measure would help shield witnesses who place themselves in a vulnerable situation by testifying against an abuser. The bill creates a penalty structure similar to a bail jumping violation for individuals who violate a court prohibition, which again, more closely corresponds to the underlying crime that was committed.

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Lastly, Assembly Bill 269 helps close a loophole that allows offenders to escape even if they clearly violate a prohibition. Current law requires a judge to specifically recite the penalty for a violation, and if they fail to do so it creates a technical loophole in the law. This bill allows the court to include the prohibition in the judgment of conviction for the crime, instead of requiring the judge to recite the penalty.

Contact prohibitions are put into place to protect victims and prevent further abuse. This legislation strengthens protections for victims, adds protections for witnesses, and closes a loophole in the law that will help hold offenders accountable for violating a court prohibition. This bill protects those that need it most, and I urge you to vote in favor of Assembly Bill 269.

